

Message Text

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FM SECSTATE WASHDC

TO AMCONSUL JERUSALEM IMMEDIATE

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E.O. 11652: GDS

TAGS: PFOR, IS

SUBJECT: STRAITS OF BAB-EL-MANDEB

REF: JERUSALEM 1349

FOR LEIGH FROM SCHWEBEL

1. SUGGEST FOLLOWING ALTERNATE TEXT, WHICH STAYS AS CLOSE AS POSSIBLE TO ONE SUBMITTED REFTEL. QUOTE. IN ACCORDANCE WITH THE PRINCIPLE OF FREEDOM OF NAVIGATION ON THE HIGH SEAS AND FREE AND UNIMPEDED PASSAGE THROUGH AND OVER STRAITS CONNECTING INTERNATIONAL WATERS, THE U.S. REGARDS THE STRAIT OF BAB-EL-MANDEB AND THE STRAIT OF GIBRALTAR AS SUCH STRAITS IT WILL STRONGLY SUPPORT ISRAEL'S RIGHT TO FREE AND UNIMPEDED PASSAGE THROUGH AND OVER SUCH STRAITS. CONSEQUENTLY, THE USG RECOGNIZES ISRAEL'S RIGHT TO FREEDOM OF FLIGHTS OVER THE RED SEA AND SUCH STRAITS AND WILL STRONGLY SUPPORT THE EXERCISE OF THAT RIGHT. IN THE EVENT OF ANY-INTERFERENCE WITH THE PASSAGE OF ISRAELI SHIPS OR CARGOS THROUGH SUCH STRAITS
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OR WITH ISRAELI FLIGHTS OVER THE RED SEA OR SUCH STRAITS,

THE U.S. WILL CONSULT WITH ISRAEL ON HOW BEST TO ASSURE THE MAINTENANCE AND EXERCISE OF SUCH RIGHTS. UNQUOTE.

2. OUR POLICY ASSUMPTIONS ARE AS FOLLOWS:

A) USG DOES NOT WISH TO GIVE GUARANTEES REGARDING TIRAN OR SUEZ IN THIS PROVISION. THE TERM "STRAIT" IS JURIDICALLY UNDERSTOOD NOT TO INCLUDE ARTIFICIAL CANALS. WE CAN READ THE TERM "STRAITS CONNECTING INTERNATIONAL WATERS" TO MEAN STRAITS CONNECTING TWO PARTS OF THE HIGH SEAS, THUS EXCLUDING TIRAN IN PRINCIPLE IF (AS WITH A 12-MILE TERRITORIAL) THERE ARE NO HIGH SEAS IN THE GULF OF AQABA. NEVERTHELESS, THE CURRENT U.S. 3-MILE POSITION MEANS THERE WOULD BE INTERNATIONAL WATERS (HIGH SEAS) IN THE GULF OF AQABA. THUS, THE USE OF THE WORDS "SUCH STRAITS" AFTER THE FIRST SENTENCE IS SOMEWHAT AMBIGUOUS. WE CAN INTERPRET THE WORDS AS REFERRING ONLY TO GIBRALTAR AND BAB-EL-MANDEB EVEN AT PRESENT, OR AT MOST TO SIMILAR KINDS OF STRAITS, WHILE THE ISRAELIS MIGHT BE SATISFIED THAT THE REFERENCES ARE VAGUE ENOUGH NOT TO CONTRADICT THEIR POSITION ON TIRAN. ON THE OTHER HAND, THE TERM "APPROACHES TO THE RED SEA" IN EARLIER TEXTS, PARTICULARLY WHEN CONTRASTED WITH THE REFERENCE TO BAB-EL-MANDEB, WOULD SEEM TO INCLUDE TIRAN.

B) USG HAS NO POLICY DIFFICULTY IN SUPPORTING ISRAEL'S FREE AND UNIMPEDED PASSAGE RIGHTS OF GIBRALTAR OR OTHER STRAITS USED FOR INTERNATIONAL NAVIGATION CONNECTING TWO PARTS OF THE HIGH SEAS. SHORT OF AN OBLIGATION TO TAKE SPECIFIC ACTION, THIS WOULD PRESUMABLY BE OUR POLICY WITH RESPECT TO STRAITS PASSAGE OF ANY FRIENDLY STATE SINCE, IN PRINCIPLE, OUR OWN TRANSIT RIGHTS ARE ALSO INVOLVED.

C) THE ASSURANCES SHOULD FLOW FROM RIGHTS UNDER INTERNATIONAL LAW, SO THAT WE WOULD NOT BE SUPPORTING RIGHTS BROADER THAN THOSE THAT EXIST UNDER INTERNATIONAL LAW. THE OPENING WORDS "IN ACCORDANCE WITH" WOULD REFLECT THIS POINT.

3. WHILE WE HAVE NO SERIOUS OBJECTION TO USING THE TERMS FREEDOM OF NAVIGATION AND OVERFLIGHT FOR STRAITS AS WELL
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AS THE HIGH SEAS, WITH RESPECT TO STRAITS "FREE AND UNIMPEDED PASSAGE" IS CLOSER TO WHAT WE MEAN AND IMPLIES, E.G., NO UNDUE DELAY.

4. WE ARE RELUCTANT TO IMPLY, AS THE EARLIER TEXTS DO, THAT OVERFLIGHT OF STRAITS LIKE BAB-EL-MANDEB IS SEPARATE FROM THE REGIME OF PASSAGE OF THOSE STRAITS; WE REGARD IT AS PART OF THAT REGIME.

5. IF ISRAELIS NEVERTHELESS INSIST ON WORDS "APPROACHES TO THE RED SEA", WE MAY WISH TO RESPOND THAT TIRAN IS NOT INVOLVED IN THE WITHDRAWAL AT THIS POINT, AND THAT THE

QUESTION OF TIRAN AND CIVIL AVIATION AS A WHOLE SHOULD BE ADDRESSED AT A LATER STAGE. LEGALLY, OUR PROBLEM IS THAT THERE IS NO RIGHT OF OVERFLIGHT OF TIRAN UNDER THE EXISTING TERRITORIAL SEA CONVENTION OR CUSTOMARY LAW (INNOCENT PASSAGE APPLIES ONLY TO SHIPS), AND THAT IT IS EXTREMELY UNLIKELY THAT A NEW LOS CONVENTION WILL APPLY AN OVERFLIGHT RIGHT TO A STRAIT LIKE TIRAN. UNDER NORMAL PEACE-TIME CONDITIONS, ISRAEL WOULD OF COURSE HAVE CIVIL AVIATION RIGHTS THROUGHOUT EGYPT (INCLUDING ITS TERRITORIAL SEA) UNDER THE CHICAGO CONVENTION AND THE INTERNATIONAL AIR SERVICES TRANSIT AGREEMENT (BOTH EGYPT AND ISRAEL ARE PARTIES). THUS, IF WE DECIDE WE MUST REFER TO THE "APPROACHES TO THE RED SEA", WE MIGHT REFER TO IT ALONG WITH THE WORDS "IN ACCORDANCE WITH INTERNATIONAL CIVIL AVIATION CONVENTIONS"; OBVIOUSLY, EGYPT DOES NOT REGARD HERSELF AS VIOLATING THOSE CONVENTIONS BY DENYING ISRAELI OVERFLIGHT RIGHT NOW. ROBINSON

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